

John Roberts, Esq; Edmund Lock, Henry Nelthorpe and Joan his Wife, Elizabeth Seaman, Thomas Vere and Frances his Wife, Richard Berney and Robert Bene, Respondents.

A N D

The said John Roberts, Appellant.
Philip Middleton, and the said other Respondents, Respondents.

The Appellant Middleton's CASE.

Articles June 11.
1720.

THE Appellant Philip Middleton, in February 1719. having agreed with Thomas Seaman, since deceased, for the Purchase of an Estate at Suettisham in the County of Norfolk, a small Part whereof was Copyhold, for the Sum of 5500 l. the said Agreement between the Appellant and the said Thomas Seaman was, in June 1720. reduced into Articles in Writing, and signed by the Appellant and the said Thomas Seaman. Pursuant to these Articles, the Title-Deeds of the said Estate were laid before the Appellant's Council, and the Title, as to such Part thereof as was Freehold, was approved of; but as to the Copyhold Part thereof, which was about 5 l. per Annum, the Appellant's Council were of Opinion, that the same could not be surrender'd till Joan Seaman, then an Infant, and now of full Age, came of Age, and therefore that a compleat Title to such Copyhold could not till that Time be made to the Appellant: And thereupon the said Thomas Seaman agreed, that, till such Surrender could be made, 200 l. Part of the Appellant's said Purchase Money, should remain in the Appellant's Hands, at 4 l. per Cent. per Annum Interest, and that Conveyances of the Freehold should immediately be prepared and executed. And the Appellant thereupon paid the said Thomas Seaman 1300 l. in Part of the said 5500 l. and lent him, on his Note, 200 l. and 4000 l. the remaining Part of the Appellant's said Purchase-Money, was to be paid to the Trustees of the said Infant Joan Seaman, being by the Will of Sir Peter Seaman, Father of the said Thomas, charged upon the said Estate, as a Portion for her the said Joan Seaman, Daughter of the said Sir Peter, upon the Execution of the Conveyances of the said Freehold Part of the said Estate.

Aug. 29. 1720.

In Pursuance of the said Articles, Conveyances of the said Freehold Part of the said Estate were prepared by the Appellant's Council; but before the Execution thereof, the Respondent John Roberts, being thoroughly apprized of the Value of the said Estate, and of the Agreement between the said Thomas Seaman and the Appellant touching the said Purchase, and how far they had proceeded therein, and how much Money had already been paid, and how much more was to be paid, to the said Thomas Seaman and his Sister; and the said Respondent Roberts, seeming to be very well satisfied therewith, and being desirous to purchase the said Estate, came to an Agreement with the Appellant, to give him 7640 l. for the same: And thereupon,

By Articles of Agreement between the Appellant and the said John Roberts, the Appellant did agree to sell the said Estate to the said John Roberts, for the Sum of 7640 l. and within one Month to make out a good Title, in Fee-simple, to the Freehold Part thereof, and a good Estate of Inheritance to the Copyhold Part, free of all Incumbrances, except a Quit-Rent of 3 l. per Ann. to the reasonable Satisfaction of the Council of the said John Roberts; and that the said Appellant, and all Persons interested, should, within fourteen Days after making out the Title, convey the said Estate to the said John Roberts, or to such Persons as he should appoint.

Before the said Articles of the 29th of August, 1720. were drawn, and at the Time of the Execution thereof, the Appellant acquainted the said John Roberts, that unless he would pay him down the whole Purchase-Money, except the 4000 l. which was to be paid to the said Joan Seaman, he would not sell him the Estate; and that the Note for 200 l. which he had lent to the said Seaman, should be left in the Hands of the Respondent John Roberts, till a Title could be made to the Copyhold Land: To which the Respondent Roberts consenting, the said last mention'd Articles were executed, and 3640 l. Part of the said 7640 l. was paid by the said Respondent Roberts to the Appellant, for which the Appellant gave the said Respondent Roberts a Receipt on the Back of the said last mention'd Articles.

Sent. 7. 1720.

Dame Joan Seaman and Frances Vere, two of the Executors of the said Sir Peter Seaman, having, by Writing under their Hands, directed the Appellant to pay to the said Thomas Seaman (who was the other Executor of the said Sir Peter Seaman) the Sum of 2500 l. Part of the 4000 l. belonging to the said Joan Seaman, the Infant, the said Appellant did apply to the said John Roberts for the same, who paid the said Appellant 1000 l. in Part thereof, and took the Appellant's Receipt for the same, endorsed on the said Articles of the 29th of August, 1720. And the Appellant the same Day paid the 1000 l. to the said Thomas Seaman, pursuant to the Direction of the other Executors.

Soon after the Agreement between the Appellant and the Respondent Roberts, the Title Deeds, by the Direction of the said Respondent Roberts, were laid before Mr. Horsman, as the Respondent's Council, to have his Opinion on the Title to the said Estate. And the said Mr. Horsman gave his Opinion, that it would be difficult to get a good Title to the Copyhold Part of the said Estate, till Joan Seaman came of Age. And that as to the Freehold Part, the said Joan Seaman being an Infant, he doubted whether a Purchaser could be safe, without a Decree of the Court of Chancery; especially since the said Frances Seaman, one of the Executors, was married.

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Money the Appellant had paid on account of the said Purchase.

The Appellant thereupon, in full Execution of the said Agreement between him and the Respondent, by Deed Poll, dated the 12th of November, 1720. after reciting the Articles between the said Thomas Seaman and the Appellant, and the Appellant's advancing to the said Thomas Seaman the three several Sums of 1300*l.* 200*l.* and 1000*l.* on his Notes, in Part of the Consideration Money, and also reciting the said Articles between the Appellant and the Respondent, and the Respondent's repaying the Appellant the said three several Sums so paid to the said Seaman as aforesaid:

It is thereby witnessed, that for and in Consideration of the Premises, and for other Considerations, the Appellant did thereby assign to the said Respondent, his Heirs and Assigns, the said recited Articles between the said Seaman and the Appellant, and also the recited Notes under the Hand of the said Seaman, and all Monies advanced and paid to the said Seaman by the Appellant.

And also all the Estate and Interest of the Appellant to the said Premises, together with all Benefit and Advantage to be had by the said recited Articles of the said Thomas Seaman, to hold to the said Roberts, his Heirs and Assigns for ever.

Roberts's Bill,
Feb. 18. 1720.

The Respondent after this Assignment, and when the Appellant had sold to the Respondent, and at his own Desire parted with his whole Interest to him, thought fit to file a Bill in the Court of Chancery against the Appellant Middleton, Thomas Seaman, Thomas Vere and Frances his Wife, Joan Seaman, Richard Berney and Robert Bene, suggesting, That he was imposed on in the said Purchase; and that no Title could be made to the said Estate; and praying, that the Defendant Middleton might pay him back the 4640*l.* and that he might be discharged from his said Articles.

Appellant's
Cross Bill, Trin.
Term, 1721.
Decretal Order,
April 30. 1723.

The Appellant Middleton filed a Cross Bill in the said Court, against the said John Roberts, Thomas Seaman, Thomas Vere and Frances his Wife, Richard Berney, and Robert Bene, and Joan Seaman the Infant; praying a specifick Performance of both the said Articles of Agreement.

The Causes came on to be heard before the Lord High Chancellor, who referred it to Mr. Lightbourn, one of the Masters of the said Court, to enquire and look into the Title of the said Estate, and to see what Proceedings had been had, and what Objections made, and when; and what Money had been paid, and when; and to state the whole Matter specially to the Court, and whether a good Title could be made to the Estate in Question.

Master's Report,
Aug. 9. 1723.

The said Master, by his Report, certified to the Court all the above-mentioned Facts to be true; and that several Suits having been formerly commenced between one Thomas Patrick and the said Sir Peter Seaman, concerning an Agreement for the Purchase of the said Estate before that Time, made between the said Patrick and one Henry Framingham, deceased, whose Daughter and Heir the said Sir Peter Seaman married; All Matters in Difference, were referred to the Determination of one John Marbon, Esq.

June 11. 1715.

That the said John Marbon, on the 11th of June 1715, did Award the said Sir Peter Seaman to be the Purchaser of the said Estate at 4695*l.*

Sir Peter Seaman died Dec.
22. 1715.

That afterwards Sir Peter Seaman died, and by his Will devised, That the Purchase-Money for the Estate in Question, should be paid out of his personal Estate, and then devised the said Estate to his Daughter the said Joan Seaman the Infant, and her Heirs: But if his Son, the said Thomas Seaman, should have a mind to have the said Estate, then he devised the same to him and his Heirs, he first paying to the said Joan Seaman the Sum of 4000*l.* and of his said Will made his Wife, Dame Joan Seaman, Frances the Wife of the said Thomas Vere, and the said Thomas Seaman, Executors.

March 23, 24.
1715.

That by Indentures of Lease and Release, of these Dates, the said Thomas Patrick and his Wife, for the Considerations therein mentioned, did convey the said Estate to the said Richard Berney and Robert Bene, and their Heirs, subject to the Uses and Conditions in the Will of the said Sir Peter Seaman; and by the said Deed of Release, a Fine levied in the 10th Year of Queen Ann, by the said Patrick and his Wife, was declared to be to the Use of the said Berney and Bene, and their Heirs.

April 25. 1716.

That the said Patrick and his Wife did surrender 16 Acres, being that Part of the said Estate as is Copyhold, to the said Joan Seaman the Infant, and her Heirs, subject to the Conditions of Sir Peter Seaman's Will: And the said Joan being an Infant, was, on the 7th of October 1718, accordingly admitted thereto.

Oct. 17. 1718.

And that the Appellant had produced to him a Report made by Mr. Dormer, a late Master of the said Court, in March 1714, in a Cause depending between the said Thomas Patrick and Sir Peter Seaman, relating to the Estate now in Question, in which Report Mr. Dormer did certify, that by the Depositions taken in the said Cause, it did appear to him, that the Copyhold Lands, then and now in Question, did not bear Entails; and that none of the Copyhold Lands held of the Manors, whereof the same are held, did, by the Custom of the said Manors, bear Entails; and that the Appellant Middleton had produced to him, Certificates of the several Stewards of the said Manors to the like Effect: And the said Master, after stating the other Part of the Title to the said Estate, concludes his Report in these Terms:

Wherefore, in regard the Estate in Question, is, by Sir Peter Seaman's Will, first devised to Joan Seaman his Daughter, and her Heirs, tho' it be therein after declared, That if his Son had a mind to the Estate, it should be to him and his Heirs, he paying first to the Daughter 4000*l.* which would be sufficient to give the Title of the Estate to him: But that being upon a Condition precedent, which doth not appear to have been performed at the Time of the Articles betwixt Thomas Seaman and Philip Middleton, I apprehend that he and the Trustees Berney and Bene, could not at the Time of entering into those Articles, pursuant thereto, convey the Freehold Estate to the Defendant Middleton and his Heirs; and 17 Acres of the Copyhold having been surrendered to the Use of the said Joan Seaman, upon the Condition of Sir Peter Seaman's Will; and she being at the Time of the Articles, and still continuing to be an Infant, about the Age of 18 Years, a good Title cannot be made to the Freehold and Copyhold Estate in Question, during such her Infancy, without the Assistance of this Honourable Court: But when she comes of Age, I apprehend that she, together with Thomas Seaman, who is Heir at Law to Framingham, and the Trustees, may make a good Title to a Purchaser of the said Estate.

The

7 March, 1723.

The said Cause came on again to be heard by the said Lord High Chancellor, on the said *Lightbourn's Report*, and his Lordship declared, That the said *John Roberts* had no reason to come into this Court, to set aside the said Articles; For that he knew of the Appellant *Middleton's* Purchase, and of his Agreement with the said *Thomas Seaman*, and was apprized of the Appellant *Middleton's* Title to the said Estate; and as to the Time limited for the Performance of the said Articles, the said *John Roberts* waved the same, by his insisting to have an Assignment of the Appellant *Middleton's* Articles, which he enter'd into with the said *Thomas Seaman*.

That as to the Copyhold Estate, it did not appear but that the said *Thomas Seaman* had a good Title to the same; and did therefore Decree, That the said Sum of 200 *l.* should rest where it then was, until a Surrender could be made of the said Copyhold Premises to the said *John Roberts*, upon the Terms in the said Articles; and in case the whole Copyhold Estate could not be surrendered; then so much as could was to be surrendered, and the said *John Roberts* was to be admitted thereto, and so much of the 200 *l.* was to be paid as would be a Proportion for the Lands which should be so surrendered, which Proportion was to be established by the said Master *Lightbourn*, in case the Parties differed.

And his Lordship did also declare, That the Appellant had made a good Title to the Freehold Estate, and did decree the said *Thomas Seaman* should, at the Charge of the said *John Roberts*, convey the same to the said *John Roberts*, and that the said Master should settle the Conveyances which were to be executed forthwith by all Parties necessary, and that the Appellant should be paid the Rents of the Premises from Lady-day before the Date of the said Articles, to Lady-day then next, and should then deliver the Possession of the Premises to the Respondent *Roberts*; and that the Appellant (he first giving Security to indemnify the Defendant *Seaman*) should be at Liberty to make use of the said *Seaman's* Name, for Recovery of the Rents from the Tenants of the Premises in Question.

His Lordship did also further Order and Decree, That the said Mr. *Lightbourn* should take an Account of what Sums of Money the Appellant had received of the said Respondent *Roberts*, and to compute Interest for the same, from the Time of Payment thereof, which Interest was to be answered by the Appellant, from the Time of such Payment, till Lady-day then next: And the said Mr. *Lightbourn* was also to take an Account, and see what more would be remaining due from the said *John Roberts*, for the Remainder of the Purchase Money after such Interest, and the Sum of 200 *l.* before mentioned were deducted, and what, upon taking the said Account, should appear to be in the said *John Roberts's* Hands, he was thereby ordered and decreed to bring the same before the said Master *Lightbourn*, in Part of the 4000 *l.* which was due to *Joan Seaman*, the Infant, to be placed out at Interest for the said Infant's Benefit: And his Lordship was pleased to direct, That if upon taking the said Account, it should appear that the Remainder of the Purchase Money in the said *Roberts's* Hands, after such Deductions as aforesaid, should fall short of making good to the said *Joan Seaman* the Infant, the said Sum of 4000 *l.* and the Interest thereof, such Deficiency should be made good by the said *Thomas Seaman* out of the 1000 *l.* part of the 2500 *l.* which he had received, and out of the Interest of the said 1000 *l.* from the Time here mentioned, the same to Lady day then next, to be computed by the said Master *Lightbourn*; and in case that should not be sufficient to answer such Deficiency, then the same was to be made good by the Appellant.

25 Mar. 1724.

The said *John Roberts* entered into, and still continues in Possession of the Estate in Question, and acquiesced under the said Decrees for near three Years; but the Appellant *Middleton* conceived himself aggrieved by so much of the said Decree of the 7th of March 1723, as did order, That the Rents of the Premises from Lady-day 1720, to Lady-day 1724, should be paid to him, and that the Master should compute Interest for such Sums of Money as were received by the Appellant *Middleton*, of the said *John Roberts*, in Part of his Purchase Money, from the Time of the Payment thereof, to Lady day 1724; and that after a Deduction of such Interest, and the said 200 *l.* out of the Remainder of the said *John Roberts's* Purchase Money, only the Residue thereof should be by him brought before the Master; and that if the same, and the Money to be paid by the said *Thomas Seaman* as aforesaid, should fall short of making up the said 4000 *l.* and Interest, to the said *Joan Seaman* (who attained her Age of 21 Years in February 1725) the Deficiency should be made good by the Appellant, and did appeal to your Lordships from such Part of the said Decree of the 7th of March 1723.

Appellant *Middleton's* Appeal, 26 Jan. 1726.

I. For that it being declared by the said Decree, That the said *John Roberts* had no Reason to come into the said Court of Chancery to set aside the said Articles, but that the said Purchase therein agreed upon, ought to be forthwith compleated. And it appearing that the Monies received by the Appellant from the said *Roberts*, was only what he was intitled to by Virtue of his Agreement with the said *Roberts*, and as the Consideration for his assigning over his Articles with *Seaman*, the Notes and Monies that he had before paid on Account of the Purchase: And in regard that from the Time of his said Assignment he ceased to have any Concern with, or Title to the Premises, he therefore ought not to be decreed to have paid any Interest, nor to have been involved in any Account or Receipts of the Rents and Profits of the said Estate.

II. For that the said Respondent *Roberts* having retained in his Hands the Sum of 3000 *l.* Part of the said Purchase Money, on account of the said 4000 *l.* and from the Time of this Assignment from the Appellant, the said *Roberts* being intitled to the Rents and Profits of the said Premises, ought therefore to pay the said 4000 *l.* and Interest, and the Appellant ought not to pay any Part thereof.

III. For that the aforesaid Note of the said *Thomas Seaman* for 200 *l.* and the Money due thereon, being assigned by the Appellant to the said *John Roberts*, the Direction for deducting 200 *l.* out of the Remainder of the Purchase Money in the Hands of the said *John Roberts*, is a manifest Injury to the Appellant; for if that Direction stands, the Appellant will receive of the said *John Roberts* 200 *l.* less than the Purchase Money agreed upon by the Articles; though those Articles, and that Agreement, are confirmed by the Decree.

Mar. 1726.

After which Appeal, the Respondent *Roberts*, though he had been near three Years in Possession of the Premises under the said Decree, and never made any Complaint against it, appealed likewise from the same, alledging, That he ought to be discharged from his said Articles for the Purchase of the said Estate, and ought to be repaid the Money which he paid to the Appellant *Middleton*, with Interest for the

for the said Decree; for the said Decree of the 7th of March 1723, and by the Proofs in the said Cause, there are several material Defects in the Title to the Estate; and that the said Appellant did, nor could, within the Time prefixed by the Articles, make out a Title to him the said Roberts, nor has yet made, or can make out such Title: And that his the said John Roberts's accepting of an Assignment of the said Articles, Note, and Receipts, from the said Thomas Seaman, hath not dispensed with the not making out a Title within the Time prefixed; for that it appears by the Findings in the said Cause, that he accepted such Assignment only to secure him the Repayment of what he had paid to the said Appellant Middleton as aforesaid; and that he was to pay an extravagant Price for the said Estate, viz. 7640*l.* for 277*l.* per Annum, which is 2140*l.* more than the said Appellant Middleton agreed to pay for the same but a few Weeks before.

Which Objections of the said Roberts to the said Decree, the said Philip Middleton, the Appellant in the Original Appeal, humbly insists are of no Weight;

- I. For that the legal Estate of the Freehold Premises, being by the said Patrick and his Wife, by the said Deeds of Lease and Release, and Fine, well conveyed to the said Berney and Bene, and their Heirs, they are thereby enabled to make a good Title to the same, and either already have, or were always, and still are, willing and ready to convey the same to the said Roberts; And that as to any Defect in the Title to the Copyhold Premises, the said John Roberts hath accepted of the said 200*l.* as an Equivalent for the same, and which is much above the Value thereof, it being admitted to be but 5*l.* per Annum.
- II. And for that the said Roberts after his being fully apprized of the Title, not only approved of the same, and declared that he would go on therewith, but insisted on the Appellant's assigning over his Articles and Notes for Money paid as aforesaid, and all the Appellant's Interest in the said Premises; and which the Appellant accordingly did, and the said Roberts in Consideration thereof, paid the Appellant all that Part of the Purchase Money which belonged to him to receive, and since entred into Possession of the said Freehold and Copyhold Premises, and continued in Possession thereof for the Space of three Years, and is even at this Time in Possession of the same; which amounts to an Acceptance of the Title, and a Submission to the said Decree.
- III. That as to the pretended Dearness of the said Purchase, it appears it is about 28 Years Purchase, and was made the 20th of August 1720, when Lands generally sold at a much greater Rate or Value; and the Respondent paid his Purchase Money by the Sale of South-Sea Stock at 800 and the Appellant had the Misfortune to lay it out again in Stock at the same, or a higher Price.

WHEREFORE, for these, and several other Reasons, this Appellant humbly hopes, that the said Decree of the 7th of March 1723, shall be rectified in the several Particulars complained of by this Appellant, and that the Appeal of the said John Roberts shall be Dismissed with Cost.

25 March 1728

John Roberts
Appellant
Robert J. House of Lords

J. WILLES.

W. PEERE WILLIAMS.

Philip Middleton - Appellant.
John Roberts, & al - Respondents.
AND
John Roberts - Appellant.
Philip Middleton, & al Respondents.
The Appellant Middleton's CASE.

To be heard at the Bar of the House of Lords, on Tuesday the 26th Day of March, 1728.